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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

In re JESSE C., JR., et al., Persons
Coming Under the Juvenile Court Law.

SHASTA COUNTY DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

JESSE C., SR.,

Defendant and Appellant.

C064304

(Super. Ct. Nos.
27829-01, 27830-01,
27831-01)

Jesse C., Sr., father of minors Jesse C., Jr., Sebastian C., and Arianna C., appeals from the juvenile court's order terminating his parental rights and implementing a permanent plan of adoption. (Welf. & Inst. Code, § 366.26 [all further statutory references are to the Welfare & Institutions Code].)¹

¹ We do not use initials for the given names of the minors or father. It impairs readability and leads to confusion for legal research and record-keeping, and their names are among the 1000 most popular birth names during the last nine years. (*In re Jennifer O.* (2010) 184 Cal.App.4th 539, 541, fn. 1; *Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047, 1051, fn. 2; *In re*

He contends only that the oldest minor (Jesse, Jr.) is not adoptable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jurisdiction and Disposition

On December 22, 2008, the Shasta County Department of Social Services (Department) filed petitions under section 300, subdivisions (b) and (g), as to minors Jesse, Jr., a four-year-old male; Sebastian, a three-year-old male; and Arianna, a 22-month-old female. The petitions alleged:

The parents had continuing drug problems which put the minors at risk. Responding to a domestic disturbance call at the motel room where the parents lived with the minors, the police found the parents had just been smoking marijuana in the minors' presence. (The smell was detectable from outside the room, and mother was caught trying to hide a still-hot pipe in the minors' bed.) The room held two beds for seven persons, with no private section for the parents. The beds had no sheets and the blankets were filthy. Most of the food in the room was padlocked.

Father was placed in the Proposition 36 program on September 16, 2008, and mother was on a deferred entry of judgment for a drug conviction on the same date. After the police responded to the present call, both parents were arrested and jailed on drug-related charges.

Branden O. (2009) 174 Cal.App.4th 637, 639, fn. 2; *In re Edward S.* (2009) 173 Cal.App.4th 387, 392, fn. 1; Cal. Rules of Court, rule 8.401(a)(2).)

The juvenile court ordered the minors detained on December 23, 2008.

The Department's jurisdiction/disposition report recommended providing reunification services for both parents.

In an addendum report, the Department stated: Both parents tested positive for methamphetamines on February 9, 2009. On March 4, 2009, father was arrested and mother was cited and released. Father had violated the no-alcohol clause of his probation.

On April 17, 2009, at the jurisdictional hearing, the juvenile court found that the minors were persons described by section 300, subdivisions (b) and (g). On April 29, 2009, at the dispositional hearing, the minors were adjudged dependents of the juvenile court and placed outside the parents' custody, with reunification services provided to the parents.

The Six-Month Review

In its October 27, 2009, six-month review report, the Department recommended terminating the parents' reunification services. The parents were living in a motel room with other adults and had not participated in services, consistently visited the minors, or maintained contact with the social worker.

The minors' current placements met their needs. Jesse, Jr., was placed separately from the other two minors, but saw them regularly.

After struggling in his first placement, Jesse, Jr., was moved to a setting where he had more room to roam and to play

with other children. He remained more aggressive than the other children there, but that behavior was starting to decrease. However, he had proved too immature and aggressive for kindergarten, and so was being held back to enter school the next year.

Sebastian, the younger male, who was placed with his sister Arianna, was also aggressive at times, but that behavior was decreasing.

At the six-month review hearing on October 30, 2009, the juvenile court terminated the parents' reunification services.

The Section 366.26 Report

The Department's selection and implementation report, filed February 5, 2010, recommended the termination of parental rights and the ordering of a permanent plan of adoption for all the minors. Father had not visited the minors in almost a year.

Jesse, Jr., was still placed separately from the other minors, but they visited regularly and had a significant bond. Their current foster families were committed to maintaining their contact with each other while transitioning them into their prospective adoptive placement.

Jesse, Jr., and Sebastian "present with challenging behaviors including anger and aggression issues." The boys had been placed separately because of past aggressive interactions between them. When first placed, they hoarded food and showed anger and defiance; however, both had made progress.

All the minors had demonstrated the ability to bond. All now appeared happy, healthy, and on track; they no longer showed

signs of distress. They were catching up to their peers. Arianna, the youngest child, who had suffered less than the boys from their birth parents' abuse and neglect, was happy and affectionate.

As stated in a previous report, Jesse, Jr., was removed from kindergarten after a month because he had difficulty with academics, fine motor skills, and relationships with other children and the teacher. However, he enjoyed the rural atmosphere of his current placement, loved to play with other children, and helped with outdoor chores. Although he sometimes needed "personal time out" to rein in aggression, he generally played well with his siblings.

Sebastian, like Jesse, Jr., had needed help learning how to control his anger. He was currently benefiting from preschool. He had been referred for therapy and a mental health assessment.

The boys "do not have diagnosed mental health needs; however, their behavior does present some challenges in the home." Their anger and aggression had lessened due to the consistency with which their current foster care providers treated them. The prospective adoptive parents spoke regularly with the foster parents to find out what strategies worked best with the boys.

The minors were "all thriving on a consistent daily routine." Their prospective adoptive parents had expressed no concerns about the minors based on what they had seen and heard about them.

The prospective adoptive home had been approved for adoption. There was a "transition plan" to bring the younger minors into the home by February 6, 2010, and Jesse, Jr., by May 1, 2010.

The prospective adoptive parents had adopted four children before. They had met all the minors and were highly motivated to adopt them. They wanted to keep the sibling group together. The boys had indicated that they were ready to have new parents.

If the prospective adoptive parents did not adopt the minors, "they would be considered highly adoptable by many other applicants. They are healthy, active, engaging children who thrive with love, consistency, and nurture."

The minors had suffered from their birth parents' neglect and unstable lifestyle. They now needed the security and stability which adoption could provide.

The Section 366.26 Hearing

At the hearing on February 19, 2010, father was present. His counsel made an "offer of proof" that if called to testify, father would say he had lived with the minors from birth until they were detained, he believed he had a good relationship with them which they would benefit from continuing, and he opposed the termination of his parental rights. Counsel then submitted without calling father or any other witness.

The Department's counsel said the "transition" of Jesse, Jr., was going much faster than the selection and implementation report had anticipated, and was expected to be finalized within two weeks.

Father's counsel requested a continuance until Jesse, Jr., was in the adoptive home. Impliedly denying the request, the juvenile court adopted the recommended findings and orders.

DISCUSSION

Father contends that the juvenile court erred by terminating his parental rights and ordering a permanent plan of adoption because the "individual traits of [Jesse, Jr.] made it unlikely he would be adopted within a reasonable time should his current placement fail." This contention is frivolous.

"If the court determines, based on the assessment . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted." (§ 366.26, subd. (c)(1).)

We review the juvenile court's finding that the child is likely to be adopted within a reasonable time under the substantial evidence standard, giving it the benefit of every reasonable inference and resolving any evidentiary conflicts in favor of affirming. (*In re I.I.* (2008) 168 Cal.App.4th 857, 869.) That is, we must determine whether the record contains substantial evidence from which the court could find clear and convincing evidence that the child was likely to be adopted within a reasonable time. (*In re B.D.* (2008) 159 Cal.App.4th

1218, 1232.) A parent's failure to challenge the sufficiency of the evidence for adoptability in the juvenile court does not forfeit the issue on appeal. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.)

Determination of whether a child is likely to be adopted focuses first upon the characteristics of the child; therefore, a finding of adoptability does not require that the child already be in a prospective adoptive home. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) However, the fact that a prospective adoptive family has expressed interest in adopting the child is evidence that the child is likely to be adopted by that family or some other family in a reasonable time. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154; *In re Sarah M.*, *supra*, at pp. 1649-1651.)

Viewing the evidence most favorably to the juvenile court's orders, as we must, it overwhelmingly proves Jesse, Jr., is adoptable. A prospective adoptive family has agreed to receive him into their home in full knowledge of his history, and the transition is proceeding more quickly than the Department had expected. Furthermore, the Department's selection and implementation report states that even if this family does not adopt him, he, like the other minors, is "highly adoptable" because he is a "healthy, active, engaging child[] who thrive[s] with love, consistency, and nurture."

Father recites the evidence that Jesse, Jr., has had developmental and emotional problems. But the Department, aware of his history, nevertheless recommended adoption, and the

juvenile court found his history no bar to adoption, given the evidence that his problems had steadily diminished.

Father relies on *In re Tamneisha S.* (1997) 58 Cal.App.4th 798. That decision does not support him. The juvenile court there ordered legal guardianship because the minor had not been shown to be adoptable. (*Id.* at p. 800.) Applying the highly deferential abuse of discretion standard of review, the appellate court affirmed because the agency had been unable to find prospective adoptive parents for the three-year-old minor, who had a history of severe asthma, mental and developmental delays, and "abnormal behavior including rolling her eyes back into her head and banging her head." (*Id.* at pp. 802, 806-808.) The fact that the appellate court there, on grossly different facts, found it within the juvenile court's discretion to find the minor unadoptable within a reasonable time does nothing to undermine our confidence in the juvenile court's order here.

Father asserts that a mistaken finding of adoptability could "permanently separate the child from the child's natural parents, and condemn the child to permanent foster care." Coming from a parent who never took a single step toward participating in services and had not even visited the minors in a year, father's concern that *the court* might "permanently separate the child from the child's natural parents" is misplaced, to say the least.

DISPOSITION

The judgment (orders terminating parental rights and implementing a permanent plan of adoption) is affirmed.

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

CANTIL-SAKAUYE, J.